

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:05cr253

UNITED STATES OF AMERICA

vs.

DIONISIO HERNANDEZ (1)

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ORDER

**THIS MATTER** is before the Court upon second motion of the defendant pro se for a reduction of sentence based on the retroactive amendments to the United States Sentencing Guidelines relating to crack cocaine. (Doc. No. 151).

The Court denied the defendant's previous motion because his sentence was based on cocaine, not cocaine base, as called for in his plea agreement. (Doc. No. 139: Order). The defendant now complains that the presentence report failed to include cocaine base amounts attributable to him (Doc. No. 151: Motion at 2), although he did not do so at sentencing. Accordingly, the time has past for objecting to the presentence report and the defendant is not eligible for a sentence reduction.

**IT IS, THEREFORE, ORDERED** that the defendant's motion is **DENIED**.

The Clerk is directed to certify copies of this order to the defendant, the Community Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: August 27, 2008



Robert J. Conrad, Jr.  
Chief United States District Judge

